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Message Text

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---------- 106232
R 032211Z APR 75
FM SECSTATE WASHDC
TO AMEMBASSY CARACAS

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E.O. 11652: N/A
TAGS: EINV, VE
SUBJECT: PETROLEUM REVERSION BILL

1. GLENN LUCAS, GULF'S ASSOCIATE GENERAL COUNSEL FOR LATIN AMERICA, AND NESTOR ORTIZ, GULF'S WASHINGTON-BASED FOREIGN AFFAIRS REPRESENTATIVE, MET AT THEIR REQUEST WITH DEPTOFFS (L, EB, ARA) ON MARCH 26 TO DISCUSS GULF'S REACTION TO PENDING OIL LEGISLATION. ACCORDING TO LUCAS, HIS SOURCES IN VENEZUELA REPORT THAT THE BILL IS LIKELY TO BE ENACTED IN ITS PRESENT FORM--OR WEIGHED EVEN MORE HEAVILY AGAINST THE COMPANIES--AND THE PRESENT OUTLOOK IS "GRIM."

2. LUCAS REVIEWED HIS UNDERSTANDING OF THE BILL'S SALIENT
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PROVISIONS. THE CONCESSIONS WILL BE EXTINGUISHED 120 DAYS

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AFTER ENACTMENT. THE GOV MUST MAKE AN OFFER WITHIN 45 DAYS, TO WHICH THE COMPANIES HAVE 15 DAYS TO RESPOND. THE MAXIMUM OFFER MAY NOT EXCEED NET BOOK VALUE OF THE PROPERTIES SPECIFIED IN THE EXPROPRIATION COMPLAINT, AND THIS WILL BE OFF-SET BY DEDUCTIONS FOR AMOUNTS ALLEGED TO BE OWED THE GOV BY THE COMPANIES. PAYMENT OF COMPENSATION CAN BE DEFERRED FOR 10 YEARS, AND MOST LIKELY WILL CONSIST OF 10-YEAR BONDS. LUCAS INDICATED THAT GULF WOULD PREFER TO NEGOTIATE A SETTLEMENT, RATHER THAN FOLLOWING THE BILL'S FORMAL PROCEDURE FOR DETERMINING COMPENSATION.

THEY FEEL THAT, "PROCEDURALLY AND CONCEPTUALLY," THEY MAY BE BETTER ABLE TO LIMIT CATEGORIES OF DEDUCTIONS FROM NET BOOK VALUE THIS WAY.

3. LUCAS WENT INTO SOME DETAIL EXPLAINING IN STRICT CONFIDENCE, GULF'S REACTION T0 THE PROPOSED GUARANTEED FUND DEPOSIT (GFD) REQUIREMENT. HE EXPLAINED THAT IT WOULD REQUIRE A CASH DEPOSIT OF 10 PERCENT OF GULF'S CUMULATIVE INVESTMENT IN VENEZUELA. THIS WOULD MEAN PAYMENT OF DOLS 42 MILLION FOR PRODUCTION FACILITIES ALONE, AND AN ADDITIONAL DOLS 10 MILLION FOR GULF'S REFINING OPERATIONS. FOR PURPOSES OF COMPARISON, LUCAS ESTIMATED THAT THE VENEZUELAN NET BOOK VALUE FOR THESE INVESTMENTS AMOUNT TO DOLS 110 MILLION AND DOLS 8 MILLION, RESPECTIVELY.

LUCAS PROFESSED DISMAY AT INCLUSION OF THE GFD REQUIREMENT IN THE BILL, AND NOTED THAT GULF HAD RECEIVED CERTAIN "ASSURANCES" THAT IT WOULD NOT BE INCLUDED. HE EXPRESSED THE OPINION THAT IT MAY HAVE BEEN RETAINED TO ENABLE CONGRESS TO DELETE IT, BUT FEELS THAT THIS IS "A DANGEROUS GAME." LUCAS CLEARLY INDICATED THAT GULF IS CONSIDERING NON-PAYMENT OF THE GFD IF IT APPEARS IN THE FINAL ENACTMENT--IT MAY BE FINANCIALLY RATIONAL TO REFUSE PAYMENT GIVEN THE ANTICIPATED LEVEL OF NET COMPENSATION--BUT ADMITTED THAT THIS MIGHT MILITATE AGAINST A CONTINUING BENEFICIAL RELATIONSHIP WITH THE GOV, WHICH GULF ALSO CONSIDERS TO BE IMPORTANT. LUCAS BELIEVES THE LEGAL EFFECT OF NON-PAYMENT WOULD BE A FINE OF ONE MILLION BOLIVARS, AND THAT IT MIGHT TRIGGER THE BILL'S FORMAL
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PROCEDURES FOR DETERMINING COMPENSATION.

4. WE INQUIRED ABOUT THE KIND OF RELATIONSHIP GULF WOULD LIKE TO HAVE WITH VENEZUELA FOLLOWING REVERSION. LUCAS REPLIED THAT GULF HAD HOPED FOR CONTRACTUAL ARRANGEMENTS, E.G., FOR TECHNICAL SERVICES, WHICH WOULD ALLOW THE COMPANY'S OPERATIONS TO BE PHASED OUT OVER TIME. HE EXPRESSED SOME SKEPTICISM THAT THE PROPOSED "ASSOCIATION

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AGREEMENTS" CONTEMPLATE AS FULL AN OPERATING RELATIONSHIP AS GULF WOULD HAVE LIKED, AND BELIEVES THAT THEY COMPARE UNFAVORABLY WITH THE ARRANGEMENTS NEGOTIATED AS PART OF TE IRON ORE SETTLEMENTS. GULF BELIEVES IT HAS NO ASSURANCE OF ANY ONGOING ROLE IN VENEZUELA, AND THAT, IN ANY EVENT, ITS OPERATIONS ARE LIKELY TO BE VERY RESTRICTED.

5. LUCAS BRIEFLY REVIEWED THE LEGAL STATUS OF GULF'S CONCESSIONS. THEY RUN FOR VARYING PERIODS--MOST, PRIMARILY IN EASTERN VENEZUELA AND ALONGLAKE MARACAIBO,

EXPIRE IN 1983-84, WHILE OTHERS RUN TO 1996. GULF'S

REFINING CONCESSIONS TERMINATE IN 1992-93. LUCAS BELIEVES THE BILL IS UNFAIR IN LIMITING COMPENSATION TO NET BOOK VALUE OF PHYSICAL PROPERTIES (LESS VARIOUS REDUCTIONS), WITHOUT TAKING INTO ACCOUNT LOSS OF CONCESSION RIGHTS. HE CONCEDED, HOWEVER, THAT SINCE THE CONCESSIONS WOULD NATURALLY EXPIRE WITHOUT COMPENSATION, AND SINCE THEIR VALUE PENDING TERMINATION COULD BE INFLUENCED, FOR EXAMPLE, BY VENEZUELAN TAX LEGISLATION, THE GOV MIGHT ARGUE THAT THE PROPOSED COMPENSATION IS NOT ALL THAT BAD. HIS OWN ESTIMATE OF THE VALUE OF THE CONCESSIONS TO NORMAL EXPIRATION IS ON THE ORDER OF DOLS 370 MILLION, COMPARED WITH A NET BOOK VALUE (BEFORE DEDUCTIONS) REPORTED PARA 3 OF DOLS 118 MILLION, BUT LUCAS NOTED THAT THE DOLS 370 MILLION ESTIMATE IS NOT AN OFFICIAL COMPANY FIGURE.

6. WE ALSO DISCUSSED VARIOUS LEGAL REMEDIES POTENTIALLY AVAILABLE TO GULF IN THE ABSENCE OF A NEGOTIATED SETTLEMENT. ACCORDING TO LUCAS, THEY WILL PROBABLY SEEK TO EXHAUST LOCAL REMEDIES BY FIRST RAISING THE CONSTITUTIONAL ISSUE OF ADEQUACY OF COMPENSATION, RATHER THAN INITIALLY LIMITED OFFICIAL USE

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ACCEPTING THE FORMULA CONTAINED IN THE PENDING BILL. SUBSEQUENTLY, GULF IS SERIOUSLY CONSIDERING THE POSSIBILITY OF A CLAIM UNDER INTERNATIONAL LAW BASED UPON INADEQUATE COMPENSATION. GULF MIGHT ALSO WISH TO ARGUE THAT THE CALVO CLAUSES CONTAINED IN ITS CONCESSION AGREEMENTS, IF INVOKED TO BAR AN INTERNATIONAL CLAIM, WOULD CONSTITUTE A DENIAL OF JUSTICE. WE INFORMED LUCAS THAT THE DEPARTMENT TAKES TE POSITION THAT THE EXISTENCE OF A CALVO

CLAUSE IS NOT DISPOSITIVE OF CLAIMS SUBSEQUENTLY ASSERTED UNDER INTERNATIONAL LAW, BUT THAT OUR POSITION ON A PARTICULAR CLAIM INEVITABLY DEPENDS UPON THE FACTS OF THE PARTICULAR CASE.

7. IN CLOSING, LUCAS EMPHASIZED THAT GULF HAD NOT YET

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DECIDED HOW TO PROCEED, BUT INDICATED THAT THEY WOULD PROBABLY APPROACH THE GOV EXPRESSING OPPOSITION TO THE PRESENT LAW, ESPECIALLY THE GFD REQUIREMENT. HE PROMISED TO KEEP THE DEPARTMENT AND THE EMBASSY INFORMED OF DEVELOPMENTS. WE EXPRESSED APPRECIATION, AND STATED THAT WE WISHED PARTICULARLY TO BE GIVEN REASONABLE NOTICE OF

ANY PROPOSED SETTLEMENT OF GULF"S CLAIMS. INGERSOLL

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